

EXHIBIT

1

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 -----X

5 SPANSKI ENTERPRISES, INC. and
6 POLTEL INTERNATIONAL L.L.C.,

7 Plaintiffs and
8 Counterclaim Defendants,

9 vs.

07 Civ. 930 (GEL)

10 TELEWIZJA POLSKA, S.A., ANNA
11 MILEWSKA, KRZYSZTOF SZTANDERA,
12 MARTIN BOCHENEK, JOHN DOES 1-10,

13 Defendants,

14 TELEWIZJA POLSKA, U.S.A., INC.,
15 TELEWIZJA POLSKA CANADA INC.,

16 EUROVUS, S.A., and BOGUSLAW M.
17 SPANSKI,

18 Counterclaim Defendants.

19 -----X

20 April 17, 2008

21 10:08 a.m.

22
23 Deposition of BOGUSLAW M. SPANSKI,
24 held at the offices of Squire, Sanders &
25 Dempsey L.L.P., 350 Park Avenue, New York,
New York, pursuant to Notice, before Thomas R.
Nichols, a Registered Professional Reporter
and a Notary Public of the State of New York.

GREENHOUSE REPORTING INC.
875 Sixth Avenue - Suite 1716
New York, New York 10001
(212) 279-5108

1 Spanski

2 businesses?

3 A. I was not employed.

4 Q. You were essentially self-employed.

5 A. That's correct.

6 Q. Did Club S have employees?

7 A. Yes, it did.

8 Q. Approximately how many?

9 A. 350, maybe 400.

10 Q. Were you the CEO? Were you running
11 the business?

12 A. No, to my best recollection, because
13 it has been a while, I had management which was
14 hired and was Polish management, local Polish
15 management of the company.

16 Q. Were you the CEO or the operational
17 manager for Trends International?

18 A. I was the chairman and CEO of Trends
19 International.

20 Q. You mentioned that at some point
21 Trends International had approximately 30 to 40
22 employees.

23 Did that increase over time?

24 A. At the time when I was selling the
25 interest in the business it was -- and again, it

1 Spanski
2 is my guesstimation. I mean, we had sales force
3 which was from coast to coast. We had sales
4 representatives from Halifax to Vancouver, and
5 there were people working in the warehouses and
6 office personnel. There was quite a number of
7 people involved.

8 Q. Does Spanski Enterprises currently
9 have any employees?

10 A. It does. I mean, I think that it is a
11 group maybe of four people, five people.

12 Q. Who are those employees currently?

13 A. I mean, that would be directors of
14 Spanski Enterprises and that would be myself, my
15 wife, our son. There is Mr. Pisarek. I think
16 those would be it, the four.

17 Q. How did you become interested in
18 producing and distributing Polish television?

19 A. I don't, I mean, in 1989 when
20 basically I entered back Polish market in respect
21 after the Poland -- Polish political system
22 changed, and when I was involved in Club S
23 business, I really very frequently traveled
24 between Canada, Toronto and Poland. I have had
25 great opportunity to interact with people of

Spanski
Polish descent working and living in
North America.

4 And in 1993 when Polish television
5 established or basically brought to life
6 TVPolonia, it became subject of some discussions.
7 I realized that there is a great interest among
8 Polish immigrants to have the television program
9 or television and radio programs in their native
10 tongue. And that's how my interest was really
11 raised.

12 Q. How specifically did you become
13 involved in discussions with TV -- with Telewizja
14 Polska, S.A. with respect to their station?

15 A. 1994, in January, I have sent -- I
16 don't know if I sent a fax or I've called, but
17 I've contacted the office of the president then
18 and expressed my interest that I am interested in
19 learning more, if it is possible to become
20 distributor of TVPolonia in North America.

21 And I was directed to undertake my
22 inquiries, queries I should say, and potential
23 negotiations about this matter with the office or
24 Department Of International Relations as it was
25 called then. Which I did.

1 Spanski

2 Q. At that point in time in 1994 what
3 kind of Polish television programs or channels
4 were available in North America? If any.

5 A. To my knowledge, there were shows
6 which would broadcast for one hour every week in a
7 market like Toronto. I was not familiar how the
8 situation looked in the market like Chicago, but
9 from my later understanding the situation looked
10 similar to the arrangement that was in Toronto.

11 Q. Prior to this venture had you had any
12 experience in the television industry?

13 A. As I've listed to you my experience, I
14 was not involved in television besides being a
15 viewer.

16 Q. When you contacted -- is it OK if we
17 call Telewizja Polska --

18 A. TVP.

19 Q. -- TVP? -- TVP in Warsaw, was it your
20 understanding that they were looking for someone
21 to distribute programming in North America or --

22 A. That was my understanding, that they
23 were actively looking for a partner to underwrite
24 the cost and risk of this venture to bring it to
25 North America.

1 Spanski

2 Q. You dealt primarily with the office of
3 the department of international relations with
4 respect to this potential opportunity?

5 A. I was directed by the office of the
6 president to undertake my contacts and potential
7 discussions with office of international
8 relations.

9 Q. Who was the president at that time?

10 A. The president of TVP was Mr. Wieslaw
11 Walendziak.

12 Q. Did you speak to him personally about
13 this?

14 A. No, I didn't.

15 Q. Who did you speak with at the office
16 of the department of international relations?

17 A. The head of the department at that
18 time was Mr. Jerzy Romanski.

19 Q. How long did the process take of
20 discussing or negotiating this agreement with TVP?

21 A. It started in January of 1994. And I
22 am not -- I do not recall the specific date. I
23 think that it can be probably traced with this
24 facsimile communication, and it culminated on
25 December 14, 1994, with the execution of the

Spanski

agreement.

Q. How frequently did you communicate with TVP during this time frame that was almost a year? Was it once a month? Once a week? Once every day?

A. To --

Q. Was there a month where you really had all of the discussions?

A. I guess that your last description probably is the most appropriate. There were times where nothing was happening, and there were times when there was some intensive meetings or consultations.

I know for the fact that if this agreement would not be signed on December 14th, I was on my way out to the airport. So it was -- I was really overburdened with the slow speed and the process, but it culminated in the execution of the agreement.

MS. HAVERSTICK: Do you mind if we
take a short break?

(A recess was taken.)

BY MS. HAVERSTICK:

Q. Who was the primary person? Was

Spanski

Mr. Romanski the person you had most of the negotiations with?

A. I believe that he being the head of international department, he was the lead guy on negotiations. I can recall that there is some other people from the department or from the legal department which were part of the meetings which we had, but he was the one who was in charge from the television or TVP side.

Q. Who drafted the original agreement?

A. There was -- I know that it was my input into this and I could not precisely say it was drafted by TVP or our side for the reason that we were -- they were drafting it. We were proposing changes and it went back and forth. But in general, it was, just thinking about it, it was drafted by TVP's legal department.

Q. You specifically recall that it was drafted by TVP's legal department?

A. I mean, not specifically. This is 20, I mean, this is not 20, but there's a significant amount of time. And I know that there were issues which were of importance to me and there were issues which were important to TVP. So it was

1 Spanski

2 like it was being put together by both sides.

3 Q. Were you represented by a lawyer in
4 connection with these?

5 A. I was not.

6 Q. Did you have an attorney review the
7 contract before you signed it?

8 A. I did not.

9 Q. What were the issues that were
10 important to TVP?

11 A. The issues which were of importance
12 were finding the party which will underwrite the
13 cost of the whole undertaking. This was the prime
14 interest by TVP.

15 Q. Any other issues that were important
16 to TVP?

17 MR. ZAVIN: Objection. Obviously to
18 the extent he knows. He can't know their
19 internal thinking.

20 MS. HAVERSTICK: Sure.

21 A. Any other issues? I know, I recall
22 that the integrity of the shows were of importance
23 to them.

24 Q. That was something that they expressed
25 to you?

1 Spanski

2 that there might be more bureaucracy or things
3 like that?

4 A. I was not expecting the agreement to
5 be reached within 30 days.

6 Q. That was your expectation?

7 A. I was not.

8 Q. Oh, OK.

9 A. I was not expecting it. But I think
10 that one year was a lengthy process, be it with
11 the government-owned entity or otherwise.

12 Q. Now, the 1994 agreement has a
13 provision regarding production of a program. Do
14 you recall that?

15 MR. ZAVIN: Objection. Are you going
16 to show him the agreement at this point
17 or --

18 MS. HAVERSTICK: Well, I would like to
19 ask him what he -- well, let me ask the
20 question.

21 Q. What discussions do you recall having
22 during these negotiations over the idea of S-E-I,
23 SEI, producing a program?

24 A. At the time the agreement was
25 negotiated TVPolonia program to my best

Spanski

recollection was broadcasting sixteen hours a day. And that was leaving eight hours of black screen, which to my understanding at that time, even not being a television executive or involved in television, was something which would be detrimental to the success of bringing it to America.

That was the reason. And we wanted to have opportunity if such occasion would arise that this time could be filled up with locally produced programming.

Q. So was that something that was your idea or was that TVP's idea?

A. It was our idea. And -- it was our idea.

Q. When you say "our idea," who are you referring to?

A. SEI, S-E-I.

Q. So you and perhaps Mr. Pisarek.

A. Let's call it me. It's me.

Q. Now, when did you begin broadcasting in North America?

A. The official inauguration of the broadcast was sometime in September of 1995, which

1 Spanski

2 identification, this date.)

3 (Defendants' Exhibit G-1, document
4 purported to be English translation of Exhibit
5 G, marked for identification, as of this
6 date.)

7 Q. Mr. Spanski, I have, you've been
8 handed Exhibits G and G-1. Exhibit G is the
9 original December 1994 agreement between TVP and
10 SEI; is that correct? In Polish.

11 A. Yes, it is.

12 Q. And Exhibit G-1 is the English
13 translation that you submitted to the court in
14 connection with your declaration that was filed in
15 this case; is that correct?

16 A. I --

17 Q. I will tell you it is and I think your
18 counsel will tell me if I'm wrong because it is
19 labeled at the top.

20 MR. ZAVIN: We'll stipulate to that.

21 Q. Please look at paragraph 1-D of the
22 agreement. There's a defined term, "program."
23 Do you see that?

24 A. I do.

25 Q. And the program -- and that provision

1 Spanski

2 this particular section.

3 Q. Did you ever create or produce such a
4 program?

5 A. We did not.

6 Q. Did you ever investigate through any
7 production companies or any other sort of vendors
8 what you would need to do to produce some program?

9 A. We did.

10 Q. Could you tell me about that?

11 A. Starting very early in our operation,
12 it must have been 1995, we have build offices with
13 the provision for studio and we even hired
14 operators with the provision that we will be doing
15 or creating the element of the program.

16 Q. Where were these offices located?

17 A. Milwaukee Avenue in Chicago.

18 Q. When you say built offices, did you
19 actually physically build an office?

20 A. We were -- initially the lease
21 agreement which we've entered, that was for some,
22 to my recollection, raw space. It wasn't
23 finished. And we were involved in finishing those
24 offices at Milwaukee Avenue in Chicago.

25 Q. When you say "we," which company

1 Spanski

2 engaged in this endeavor?

3 A. It was Telewizja Polska USA.

4 Q. Can we refer to that entity as either
5 TVP USA or Polish television --

6 A. TVP USA is fine.

7 Q. So this was in 1995 you had a lease
8 agreement in Milwaukee for raw space for a
9 production studio?

10 A. We had an agreement in Chicago for the
11 space on Milwaukee Avenue.

12 Q. Oh, on Milwaukee Avenue.

13 A. The offices which also included
14 production facilities.

15 Q. Do you still have a copy of that lease
16 agreement?

17 A. I doubt it.

18 Q. You mentioned that you hired
19 producers?

20 A. There was a camera operator who became
21 the employee of TVP USA and there was intent and
22 preparation for producing the shows which would
23 become part of the broadcast of TVPolonia.

24 Q. What other preparation? Were there
25 scripts written or --

1 Spanski

2 A. Preparation were limited to acquiring
3 the equipment, facilitating space, and getting
4 ready to be ready when the broadcast will
5 commence.

6 Q. And what was your intent with respect
7 to this program? What sort of a program was it
8 going to be?

9 A. At that time, 1994, we thought that
10 the best program to complement the broadcast of
11 TVPolonia would be a daily news show from Chicago,
12 which is great and basically the largest
13 concentration of Polish community. And that's
14 what we were planning to do.

15 Q. How long was each show going to be of
16 the daily news?

17 A. Typically the show would, um, news
18 show would last maybe half an hour, maybe 45
19 minutes.

20 Q. And that show was going to fill up the
21 eight-hour black time?

22 A. I could -- obviously the eight hours
23 and half an hour is not what would fill it. But
24 then we would also include programming which was
25 shown on the remaining 16 hours of TVPolonia.

1 Spanski

2 there is Telewizja Polska Chicago and there is
3 Telewizja Polska St. Louis and there are some
4 other Telewizja Polskas.

5 I mean, what kind of benefit would I
6 get from registering this name with anybody? I
7 doubt that I would get any.

8 Q. Is the answer to the question then
9 that you have not?

10 A. The answer is I have not.

11 Q. Under the 1994 agreement SEI has the
12 right to use the TVPolonia logo in connection with
13 implementing the agreement; is that right?

14 A. Correct.

15 Q. So the parties addressed the issue of
16 whether or not the TVPolonia logo could be used,
17 correct?

18 A. Marketing, marketing the product.
19 We're not marketing the entity. We're not going
20 out on brochures and marketing the logo of TVP
21 USA. We're marketing what we are selling and
22 distributing. That was the purpose and that was
23 the understanding.

24 Q. You don't have any written document
25 that grants you the rights to use the names

Spanski

Telewizja Polska in your companies; is that right?

A. To my recollection, I don't.

MS. HAVERSTICK: Off the record for a moment.

(A luncheon recess was taken at
12:45 p.m.)

1 Spanski

2 1988.

3 Q. OK. So a one-time event.

4 A. Yes.

5 MS. HAVERSTICK: I would like to mark
6 this as Exhibit H.

7 (Defendants' Exhibit H, document
8 entitled "TVPolonia Broadcasting System,
9 Inc., Business Plan," marked for
10 identification, this date.)

11 Q. Mr. Spanski, if we could please look
12 at what has been marked as Defendants' Exhibit H.
13 This is a copy of a TVPolonia Broadcasting Systems
14 Inc. business plan.

15 Do you recognize this document?

16 A. It has been a while since I had it in
17 my hands, but I believe that's the document.

18 Q. SEI created this document?

19 A. I believe so, yes.

20 Q. Did you personally create this
21 document?

22 A. I do not recall if it was me
23 personally who created it.

24 Q. At some point this business plan was
25 presented to TVP; is that correct?

1 Spanski

2 A. In the early, fairly early time of
3 negotiating the agreement for distribution with
4 TVPolonia.

5 Q. You initially contemplated calling
6 your North American entity TVPolonia Broadcasting
7 Systems, Inc.; is that correct?

8 A. I guess I contemplated a number of
9 names. This was one of them, I guess.

10 Q. And this was one you presented to TVP
11 in a business plan.

12 A. Correct.

13 Q. I would like you to turn to the fourth
14 page. There is a paragraph, I believe it's the
15 second full paragraph. It references research on
16 the Polish speaking society in Canada and America.

17 Do you see that? It's the second full
18 paragraph.

19 A. On page 4?

20 Q. Yes. It's the -- the page that's
21 labeled TP 7004552 at the bottom.

22 A. Yes. Where it says?

23 Q. The second full paragraph, the word
24 starts with a B at the beginning of the paragraph?

25 A. Yes.

1 Spanski

2 Q. So you and your company did not
3 conduct any independent research on the Polish
4 speaking community and the demand for TVPolonia or
5 other television stations? Is that what you're
6 talking about?

7 A. We did not conduct our research. We
8 relied on the numbers which are provided by Polish
9 consulates or those which as it turned out are a
10 very inaccurate in application to an undertaking
11 like this.

12 Q. I would like you to look at the same
13 page, number 5.

14 A. Yes.

15 Q. Number 5, and I'm paraphrasing here,
16 states that you, your aim is to reach two million
17 subscribers within five years.

18 Do you see that?

19 A. I do.

20 Q. Where did you get that number?

21 A. The same way the Polish consulate gets
22 that there's ten million Polish people in America.

23 Q. How did you get two million
24 subscribers from ten million Polish?

25 A. Because we assume there would be a

1 Spanski
2 percentage which will not be interested. Not
3 every -- will not get a hundred percent
4 penetration of ten million.

5 Q. The ten million number that you were
6 using from the consulate, did that refer to number
7 of households or number of individuals?

8 A. Ten million is heralded for, as I
9 learned later, being involved in this project and
10 enterprise, it's heralded for political reasons.
11 It is much better to visit, to cater to or to
12 address the community which is ten million strong
13 than community which is, let's say, maybe a
14 million strong.

15 So that's where the ten million comes.
16 It has till this day when Polish politicians visit
17 the United States, they are going to visit Polish
18 community ten million strong or better. That's
19 what it is still to this day.

20 Q. Your experience in reality is that the
21 ten million number is real too high a
22 characterization?

23 A. Not my -- not my experience. I think
24 it is coming a well-known fact, there is an
25 enormous overblown of Polish ethnic group. If

1 Spanski
2 somebody who can attest to Polish roots, his
3 attestation can be presented in the toast
4 na zdrowie, as an example, to good health, makes
5 them Polish, then it well may that be there's ten
6 million Polish people in America.

7 Q. You testified that there's a
8 percentage that you assume would not be
9 interested, a percentage of this number.

10 How did you decide what percentage
11 would be not interested?

12 A. How I decided? It's a guessing game.
13 Like in any business there is very small
14 likelihood that you can achieve a hundred percent
15 penetration with any product or service you
16 provide.

17 Ours was, our goal was shown -- in
18 those numbers we're looking for 20 percent
19 penetration, which as the -- anyway, it was 20
20 percent at that time.

21 Q. Did you tell TVP that this was a
22 guess?

23 A. It was known from all information
24 exchanged with TVP that it could not have been
25 anything but. Like the business plan in its

Spanski

nature, it's that we take certain information. We try to, you know, see what we can offer and where we can get, what kind of penetration we can achieve and that was the result of it.

Q. If you could turn with me to page 6, which is labeled TP-7004554. If you look at the last paragraph in that, on that page, the first sentence, you see a reference to Spanski Enterprises Inc. planning to spend 3 million American dollars for the start-up of this enterprise?

Do you see that?

MR. ZAVIN: Objection. That is not what it says, at least even in the English translation you provided. There is no claim that Spanski Enterprises has spent \$3 million.

Q. My question, what I intended to say, and I am not sure I did, was, that there's a reference to Spanski Enterprise assigning or intending to spend \$3 million to invest in this enterprise.

Do you see that?

A. I do.

1 Spanski

2 Q. Where did the \$3 million number come
3 from? What was your basis for putting that amount
4 in your business plan?

5 A. It was my calculation that that would
6 be required to make this enterprise fly.

7 Q. How much did you actually spend in the
8 start-up of this company?

9 A. We have spent around \$1.5 million, and
10 reduction in the planned outlay of capital was due
11 to the fact that TVPolonia started broadcasting 24
12 hours per day.

13 And secondly, that delivery
14 transmission has changed from analog to digital,
15 which provided some savings.

16 Q. The first reason for the reduction,
17 the fact that TVPolonia started broadcasting 24/7,
18 you say that's a reason for a reduction in the
19 amount of capital because you did not need to fill
20 the extra hours or for some other reason?

21 A. Obviously if we would start producing
22 the show it would require some cost.

23 Q. Can you tell me generally what the
24 expenses were that made up the 1.5 million?

25 A. We're talking many, many years back.

1 Spanski

2 This is a projected statement of
3 operations.

4 Do you see that?

5 A. That's what it says, yes.

6 Q. You put together this chart?

7 A. Not me personally, but it was prepared
8 I guess.

9 Q. Do you know who did?

10 A. I can only guess that it was either
11 myself or Mr. Sniegowski. I cannot tell you
12 precisely who did.

13 Q. Would you agree with me that there's a
14 fairly detailed breakdown of the expenses here?

15 MR. ZAVIN: Objection. I assume
16 projected expenses.

17 MS. HAVERSTICK: Sure.

18 A. There are projected expenses.

19 Q. Would you agree with me that it's a
20 fairly detailed breakdown of the projected
21 expenses?

22 A. I do not really know. I mean, looking
23 at this I have a question if it was -- if it says
24 rent 200, is it 200, what? Dollars? What is it?

25 Q. If you look up here --

1 Spanski

2 A. Oh, it is in thousands, OK, 1,000,
3 thank you. OK. Yeah, I mean, \$120 million sounds
4 very impressive.

5 Q. That's true. Do you have any idea
6 where -- was there any research done or other
7 calculations done in order to come up with these
8 numbers that are on this chart?

9 A. I do not know if there was research.
10 But I think that there is some assumptions made
11 with respect to what will be the rent, what will
12 be sales, the number of subscribers. Those are
13 all assumptions.

14 Q. Can you could please turn to, it's
15 about four or five pages in that, there is a page
16 that says "Population by Age" at the top?

17 A. Uh-huh.

18 Q. And if you look at that page,
19 following that page there are about six or seven
20 pages of charts.

21 Would you agree with me this appears
22 to be the results of some sort of survey?

23 A. I believe that those are charts which
24 were obtained from some sources.

25 Q. Any idea where?

1 Spanski

2 A. I mean, I can, from what the header
3 says, it refers to Ontario. Source of news. This
4 is Ontario.

5 It also refers to 1999 census. So I
6 can guess that who was preparing that and that, as
7 I look into it, I would, um, say again, it was
8 Mr. Sniegowski who prepared that.

9 Q. To your knowledge, did SEI conduct any
10 sort of survey that resulted in this information
11 that's in the business plan or was it taken from
12 other sources?

13 A. It was taken from the other sources.

14 Q. And you don't know what sources it was
15 taken from other than your guess that it was taken
16 from the 1991 census?

17 A. I don't know. I have no idea.

18 Q. You would agree with me that this was
19 presented to TVP as some research that had been
20 done or had been compiled by your company; is that
21 correct?

22 A. It was presented in the capacity how
23 we envision the possibilities associated with the
24 project.

25 Q. It was presented in connection with

1 Spanski

2 your attempt to be the chosen company to
3 distribute TVPolonia in North America, correct?

4 A. It was presented at that time when we
5 were trying to obtain the agreement.

6 Q. There were other companies that were
7 being considered for the agreement as well,
8 correct?

9 A. That's right.

10 Q. And you were aware of that at that
11 time.

12 A. Not specifically. I've learned about
13 that after the fact.

14 Q. So you were not aware that TVP was
15 considering other companies to distribute
16 programming in the United States and Canada until
17 after you signed the agreement?

18 A. To my best recollection, there were --
19 I was not informed by anybody that there is some
20 other parties involved. What I -- when we have
21 entered into agreement, we were approached by the
22 company which name was Ethnic American
23 Broadcasting Corporation out of New Jersey, Fort
24 Lee. And they simply wanted us to, to, I don't
25 know if to make agreement with them, to somehow

1 Spanski

2 Q. Is she with a firm?

3 A. No, she is certified accountant to my
4 knowledge and then she has her own practice.

5 Q. She, so she is not an employee of TVP
6 USA?

7 A. No, she is not.

8 Q. She is an independent contractor?

9 A. Correct.

10 Q. Does TVP USA have any other
11 independent contractors?

12 A. Not that come to my mind at this
13 point.

14 Q. EuroVu, S.A. is organized under the
15 laws of Switzerland?

16 A. Switzerland.

17 Q. And that was organized in what year?

18 A. 2002.

19 Q. Why was that company created?

20 A. The company was created in response to
21 complaints and problems with accounting issues, in
22 particular withholding tax issues by TVP.

23 Q. So these are complaints and problems
24 with accounting issues made by TVP prior to 2002?

25 A. Correct.

1 Spanski

2 A. I mean, if we were to operate out of
3 Brazil, I guess we would adhere to the provisions
4 in Brazil. Since we operated in Brazil, I mean,
5 we distributed. But we have not received any
6 revenues.

7 Q. TVP did not tell you to create a new
8 operating company in Switzerland, correct?

9 A. No, they didn't.

10 Q. That was something you did on Ernst &
11 Young's recommendation in order to address an
12 issue that had been raised regarding the
13 withholding taxes, correct?

14 A. That's correct.

15 Q. Did you inform TVP that you had
16 created this new entity in Switzerland?

17 A. At the particular time I did.

18 Q. Was that in writing?

19 A. I believe that it was, firstly, I
20 mean, basically the issue was first discovered by
21 TVP, not me informing them in advance. So they
22 knew it before I had the opportunity to inform
23 them.

24 Q. Could you explain that? I don't
25 understand how that could happen.

Spanski

A. We have entered into agreement with International Channel as our agent for cable distribution and this agreement was entered through EuroVu and some individual who had relation with International Channel prior to us entering into this agreement.

He has learned when they have terminated his service that the entity called EuroVu has entered for the distribution of TVPolonia and he has contacted TVPolonia and advised them that such an agreement is in place.

So I have received inquiry or I don't know if it was fax or some correspondence from Director Bartkiewicz at that time asking me if I am familiar with this entity, which claims to have rights in the distribution of TVPolonia in the US. To which I replied yes, it was the entity which we have formed.

Q. What was his response when you told him that?

A. I believe that his response was that he will review it with the legal department if it is permissible or not permissible, and we have had exchange of correspondence on this subject, which

1 Spanski

2 division that you came up with.

3 A. In uniform way I did decide that was
4 the way we would do it. But on the agreement with
5 DIRECTV, it was for example agreed between DIRECTV
6 and us that that's what they will allocate in
7 respect to their agreement.

8 Q. Who owns the radio stations?

9 A. The radio stations are owned by
10 Polskie Radio, which is the Polish Public
11 Broadcasting.

12 Q. Both of them are owned by the same
13 company?

14 A. Correct.

15 Q. Do you remit royalties to Polish
16 Public Broadcasting for those radio stations?

17 A. To Polskie Radio?

18 Q. Yes.

19 A. No, we don't.

20 Q. How does your arrangement with them
21 work?

22 A. The arrangement with Polskie Radio is
23 that they wanted to be present in the territory of
24 North America, and we have undertook for them to
25 underwrite the cost of delivery and packaging it

1 Spanski

2 with TVPolonia and we don't have payments like we
3 have payments, royalties payments to Polish
4 television.

5 But instead, if we would start selling
6 advertising within the content of radio channels,
7 we would share those revenues.

8 Q. So you are not paying royalties to
9 anyone else on the 33 percent that you're taking
10 out and allocating to radio; is that correct?

11 A. That's correct.

12 Q. Did you ever inform anyone at TVP that
13 you were allocating 66 percent to TVPolonia and 33
14 percent to radio?

15 A. To my best knowledge, I have mentioned
16 that, yes. TVP was very well aware that there was
17 allocation for radio and television of TVPolonia.

18 Q. They were aware that there was
19 allocation?

20 A. Yes, they were aware there was
21 allocation percentage, which was allocated to
22 radio channels and there was allocation to --

23 Q. Were they aware of the specific
24 percentage?

25 A. At that time they were and --

1 Spanski

2 Q. Do you see the line that says "bank
3 service charges," \$38,489 under "Expenses"?

4 A. I do see it.

5 Q. What is that?

6 A. As a matter of fact, I do not know the
7 answer at this moment. The amount seems to be
8 high.

9 Q. That's why I asked. You don't know
10 what that represents?

11 A. No, I could not answer you at this
12 moment.

13 Q. If you look further down the page
14 under, about the middle of the page under
15 "Expenses," there are professional fees and
16 there's a legal fees of 300,000. Those were as
17 you testified the legal fees --

18 A. Associated with the litigation against
19 EchoStar.

20 Q. During what years was TVP USA paying
21 those legal expenses?

22 A. It started in May of 2002 and we
23 continued to recently.

24 Q. You recently obtained a judgment which
25 you said was somewhere between 1.2 and 1.5

1 Spanski

2 million, correct?

3 A. I don't know if I said it was 1.2 or
4 1.4. Because the judgment which we obtained was
5 precisely 1.4 million, maybe 1.43.

6 Q. What was the basis for your claim
7 against EchoStar in that case?

8 A. The fundamental claim was breach of
9 contract if I recall correctly. There were some
10 other claims made, but since I am not a legal
11 professional...

12 Q. Did those claims relate to subscriber
13 fees that you claimed were to be paid to TVP USA
14 by EchoStar?

15 A. The claims were related to not paying
16 subscriber fees. And if there were other claims
17 related to the relation of what EchoStar was
18 improperly doing, they were part of that too.

19 Q. The judgment, when did you receive the
20 1.4 million?

21 A. We received in, I mean, we did not
22 receive 1.4 million because the legal fees were
23 still outstanding and they were deducted, but we
24 received a portion of those funds in May of 2007.

25 Q. I thought that EchoStar was ordered to

1 Spanski

2 pay your attorneys' fees. And in fact, I recall
3 just seeing a copy of a check that was just
4 produced.

5 A. My understanding is that we have won
6 the judgment to receive a portion, and I believe
7 it's a significant portion of our legal fees, but
8 it is not all our legal fees.

9 Q. So after you deducted the legal fees
10 from the 1.4 million in May 2007, how much was
11 left?

12 A. It's not that I deducted, because the
13 law firm, and you know it probably much better
14 than I, did the reconciliation statement in which
15 they said this is the judgment. Those are still
16 fees due. So therefore we send you, and I believe
17 that it was sent by wire to our bank account.
18 That's the amount which is of net judgment. We
19 received it in May, sometime in May of 2007.

20 Q. How much was that amount, the net that
21 you received?

22 A. I think that there was something close
23 to 1.2 million.

24 Q. And what efforts have you made to
25 allocate and pay the portion of that 1.2 million

1 Spanski

2 that is due to TVP?

3 A. First of all, what was due to TVP were
4 unpaid fees by EchoStar and the judgment, as good
5 as it was, did not specify the amount of damages.
6 It was simply the amount which the jury awarded us
7 in this whole legal dispute and suit.

8 As soon -- I believe that May falls
9 into reporting of the second quarter for 2007.
10 And in 2007 this particular amount which was due
11 to TVP was reported and paid.

12 Q. In the second quarter of 2007?

13 A. To my best recollection, yes.

14 Q. Were they paid 8 percent of 1.2
15 million?

16 A. No.

17 Q. What were they paid?

18 A. The fees which were not paid by
19 EchoStar for the months in 2002 were, to my best
20 recollection, I am not -- it was like 990, maybe
21 \$980,000. What was paid to TVP was 8 percent of
22 75 percent of that amount.

23 Q. So where does the 75 percent come
24 from?

25 A. I think that we have discussed that

1 Spanski
2 subject in detail before, but I can revisit it.
3 Of \$20 of the package price, \$5 or 25 percent was
4 for radio services.

5 As I mentioned, TVP was informed,
6 advised in 1998 about that. So we were reporting
7 to TVP the amount that was due on their portion of
8 programming package.

9 Q. I thought that your testimony earlier
10 was that you had settled on a 66/33 division on
11 that.

12 A. 66/33 was introduced when we started
13 reporting after the agreement with Globe Cast,
14 which wanted to allocate \$12 for TVP program
15 versus radio services of \$8, and that represents
16 60/40 revenue share.

17 And in view of past practice with
18 EchoStar it was 75/25, and then with Globe Cast
19 being 60/40, Rogers Cable being 50/50, at that
20 time the decision was made that there will be
21 66/33.

22 Q. So am I correct when you were with
23 EchoStar TVP, the division that you were applying
24 was 75/25.

25 A. That's correct.

1 Spanski

2 Q. Now, back to the second quarter of
3 2007, you by my calculations included something
4 around 59 or \$60,000 in your statement to TVP from
5 the second quarter of 2007 which would have
6 reflected TVP's portion of the judgment from the
7 EchoStar case?

8 Does that sound right?

9 A. I mean --

10 (Interruption.)

11 MR. ZAVIN: Take a break?

12 (A recess was taken.)

13 THE REPORTER: There's a pending
14 question.

15 MR. ZAVIN: Let's hear the question.

16 MS. HAVERSTICK: Do you want to hear
17 the question again?

18 THE WITNESS: Please.

19 (A portion of the record was read.)

20 A. Assuming that your math is correct,
21 that's right. We included 8 percent of 75 percent
22 of the amount which EchoStar did not pay us for
23 the months of January, February, March, April and
24 a portion of May of 2002.

25 Q. And that amount was, you just said,

1 Spanski

2 approximately \$990,000?

3 A. Speaking from the memory, that was
4 somewhere.

5 Q. Do you have any documents that reflect
6 your calculation of this amount?

7 A. If I have documents? I have my, um,
8 calculations.

9 0. You have those written down?

10 A. Yes.

11 Q. Have those been produced to your
12 attorneys in this case?

13 A. I don't know.

14 MR. ZAVIN: I don't think they were
15 ever requested.

16 MR. MATTIACCIO: We might differ on
17 that. No point in taking time now.

18 MR. ZAVIN: I would also point out
19 that you're asking this witness to remember
20 by memory numbers where you have the
21 documents. You have the statements.

22 Rather than have him guess as to dates
23 and the amounts, you might just want to show
24 him the statements.

25 MS. HAVERSTICK: We're actually about

Spanski

to do that. But of course the problem is that the statements are so summary that it's impossible to tell.

MR. ZAVIN: It would certainly tell the amount and tell the dates.

MS. HAVERSTICK: Let's mark this as the next exhibit.

(Defendants' Exhibit K, Spanski Enterprises, Inc., document, Bates Nos. SEI003052 through 53 through 28 and 71 through 72, marked for identification, this date.)

BY MS. HAVERSTICK:

Q. Mr. Spanski, if you could please look at the document that has been marked as Exhibit K.

The last page of that document appears to be the financial statement from EuroVu for the second quarter of 2007; is that correct?

A. That's correct.

Q. And if you could please look at this document and tell me if you can explain how the judgment from EchoStar is reflected in the payments to TVP.

A. I mean, the amount of \$1,586,072, this

1 Spanski

2 amount of 75 percent of this 900 and 80 or 70,000.

3 Plus it also includes the amount or 66 percent of
4 the settlement we received from Time Warner Cable
5 after prolonged dispute regarding Time Warner not
6 paying us the fees on the license agreement that
7 we had with them.

8 Q. So if I take \$1,586,072, and subtract
9 out 75 percent of the -- strike that.

10 This Time Warner Cable dispute, was
11 this a dispute that, was this a lawsuit that was
12 filed in court?

13 A. No. It was settled.

14 Q. It was settled outside of litigation?

15 A. I mean, it never got to the point of
16 us fighting the lawsuit, but we were determined if
17 it would not be resolved then it would.

18 MS. HAVERSTICK: I would like to mark
19 that as Exhibit L.

20 (Defendants' Exhibit L, document
21 entitled "Release," Bates No. SEI002850,
22 marked for identification, this date.)

23 Q. If you could please look at the
24 document that's been marked as Exhibit L, this is
25 a release.

1 Spanski

2 Have you seen this before?

3 A. Yes, I have.

4 Q. Is in the settlement that you're
5 referring to with Time Warner Cable?

6 A. Yes, that's correct.

7 Q. And this settlement was for
8 approximately \$362,000. Correct?

9 A. Approximately, yes.

10 Q. And a portion of this settlement was
11 allocated to TVP in the financial statement from
12 the second quarter of 2007?

13 A. Correct.

14 Q. And what portion of this?

15 A. It was 66 percent.

16 Q. Was allocated in line 3 for the
17 income?

18 A. Correct.

19 Q. Other than the EchoStar dispute that
20 we just discussed and the Time Warner Cable
21 dispute that we just discussed are there any other
22 disputes with other providers that you had over
23 the years that have been, you know, resolved or
24 settled?

25 A. No.

1 Spanski

2 was not present at the time.

3 Q. Today that's the commonly used term
4 for accessing the shows on the Web site?

5 MR. ZAVIN: Objection. You can
6 answer.

7 Q. You can answer.

8 A. If I understand video on demand is
9 that you access the show and you pay for
10 particular show. That's my understanding of video
11 on demand.

12 Q. And on your Web site the viewers don't
13 pay for each specific show. They pay a monthly
14 subscription, correct?

15 A. That's correct.

16 Q. And are the subscribers able to access
17 as many shows as they want during the month?

18 A. Yes, that's correct.

19 Q. Are they able to access and watch the
20 same show more than once during that month?

21 A. Not currently. After receiving a
22 receipt of the letter from TVP, we have took
23 efforts, and I believe there was some special
24 software either designed or -- but right now the
25 viewer, viewability of the shows is limited to

1 Spanski

2 A. That's correct.

3 Q. -- per subscriber, correct?

4 A. Correct.

5 Q. I take that to mean that prior to that
6 time there was no limit, correct?

7 A. As long as the particular show was
8 kept in the server, I would say, that the
9 subscriber had the access to view it. There was
10 unlimited --

11 Q. As many times as they wanted.

12 A. As many times, yes.

13 Q. For what period of time was there no
14 limit on the shows? Well, let me start over.

15 When did you start making TV Polonia
16 shows available on the Web site tvpolonia.com?

17 A. I testified earlier it started in
18 1998.

19 Q. What was available on the Web site in
20 1998?

21 A. I believe in 1998 the first step
22 undertaken were testing, were offering limited
23 number of shows, testing the technology as well as
24 interest. As with years, the technology has
25 progressed and interest has changed.

Spanski

A. You can stream, to my limited knowledge about the subject, you can stream two ways. One is live stream, and the other one is streaming of particular parts to the viewer.

And if you are -- and you've asked me if we were aware of this streaming or if we were doing the streaming?

Q. If it was available on your Web site in 1998 or 1999. Either type of streaming.

A. We were steaming to the viewers, yes.

Q. Currently on your Web site are the viewers obtaining a live feed, a live streaming of the shows, or are they watching copies of the shows that are located on your servers?

A. We are not providing live streaming.

Q. Are the subscribers watching copies of the shows that are located on your servers?

A. If you call them copies, that's, you know, your current question, they are accessing the server and receiving the stream of those shows from the server.

Q. So the shows, the TV Polonia shows are located on your server, correct?

A. That's correct.

1 Spanski

2 Q. And the subscribers are accessing the
3 shows from your server.

4 A. That's my understanding, yes.

5 Q. Prior to 2007 when you implemented
6 this special software to limit access to multiple
7 viewings of one show was there any limit in place
8 to limit the number of times that a subscriber
9 could watch any given show on the Web site?

10 A. I believe that the only limit was the
11 time limit by which the shows were available on
12 the server.

13 Q. So for example, some shows may have
14 only been available on the server for a year or a
15 few months or something like that; is that right?

16 A. I would characterize your statement
17 for a year as very excessive. I think that we are
18 talking maybe a month, maybe in the case of news
19 service they might have been a couple of days.

20 But this, I mean, I would like to
21 stress out this moment that this has been
22 well-known and discussed by management from
23 Telewizja Polska, TVP in Warsaw.

24 Q. Tell me about that. How has this been
25 well-known by management of TVP in Warsaw?

1 Spanski

2 A. No. I do not know. I don't recall
3 who was the first host. As a matter of fact, this
4 company, Biprofiks, was I believe one of the first
5 who we considered really getting to agreement to
6 host the service. But as they could not provide
7 the service, there was some problems. We really
8 never got going with them.

9 Then in 2001 there was a change of the
10 Web hosting. We also had to replace servers
11 because the service was really growing leaps and
12 bounds, if I can use the expression. And that
13 caused the interruption of the service, that
14 caused that we offered the service to subscriber
15 not charging them the fee for it. I don't know if
16 that was three or six months, that period.

17 Q. At any point in time was your Web
18 site, tvpolonia.com, accessible by viewers outside
19 of North and South America?

20 A. Correct.

21 Q. At what point? During what point in
22 time was that the case?

23 A. I believe that that was from the very
24 beginning until maybe three years ago.

25 Q. What happened three years ago?

1 Spanski

2 A. We have introduced geo-blocking.

3 Q. Am I correct that geo-blocking
4 prevents users in certain territories from
5 accessing the Web site?

6 A. That limits, the technology limits the
7 access to the Web site.

8 Q. So as of approximately three years ago
9 how was the access limited to your Web site?

10 A. Before or, I mean, I don't understand.

11 Q. After you implemented the
12 geo-blocking, how was access limited? What areas?
13 I am asking you what areas access was limited
14 from.

15 A. In respect to territorial?

16 Q. Yes.

17 A. It's North and South America.

18 Q. It's limited to --

19 A. -- North and South America.

20 Q. Were you aware before that time,
21 before three years ago, were you aware that
22 viewers from all over the world could access your
23 Web site?

24 A. Not only me, but TVP and TV Polonia in
25 particular were aware about it and I believe that

1 Spanski

2 Q. In addition to the distribution of TV
3 Polonia and TVP 3, your company EuroVu also
4 distributes the Tele 5 channel; is that correct?

5 A. That's correct.

6 Q. Tele 5 is owned by a company called
7 Fincast, correct?

8 A. That's correct.

9 Q. It's not owned by TVP, correct?

10 A. It is not.

11 Q. In fact, EuroVu has a contract with
12 Fincast for the distribution of the Tele 5
13 channel, correct?

14 A. That's correct.

15 Q. I would like you to, if you could,
16 please look at the contracts. The first one I
17 believe has been marked as Exhibit G.

18 Where in those contracts do you have
19 the right to distribute Tele 5 through your EuroVu
20 company?

21 A. I don't think that I have a right or
22 it spells out that I have the right. There is an
23 understanding which was between TVP and SEI that
24 we will do everything that is possible to expand
25 the distribution of TVP's programs. And it has

1 Spanski

2 be mandatory for whomever to acquire any Polish
3 programs.

4 So to do something which is totally
5 counterproductive and damaging to the fundamentals
6 is simply not right.

7 Q. Is there any reason why you couldn't
8 create a separate company to distribute these
9 other channels?

10 A. To answer your question as you've put
11 it, there is nothing to -- I could have done it.
12 It's just a matter if I would like to avoid
13 something which is so obviously for the benefit of
14 TVP.

15 Q. Did you tell anyone at TVP about the
16 Tele 5 arrangement prior to entering into an
17 agreement to distribute that channel?

18 A. Prior, not. I have advised very
19 shortly after. I believe that -- until the
20 agreement is signed, sealed and delivered, you
21 never know it will happen or not.

22 So I would be very hesitant to discuss
23 with anybody that we are working hard to add value
24 to TVP offer and then it will not happen and then
25 I would have eggs all over my face. I was trying

1 Spanski

2 to avoid this situation.

3 Q. Who did you advise shortly after?

4 A. Our working relations with TVP until
5 2005 was with the office of director of TV
6 Polonia. At that time it was Mr. Bartkiewicz.

7 Q. How did you advise Mr. Bartkiewicz
8 that you had entered into this agreement with
9 Tele 5? Did you do it in writing, over the phone?

10 A. No, I don't recall that I did it in
11 writing. I believe that as I was meeting with him
12 at his offices we had, um, I was traveling very
13 frequently to Warsaw. So I advised him that with
14 pride that we will be, you know, we have obtained
15 additional channel and that was the form of my
16 notification.

17 Q. Did you give him a copy of the
18 agreement?

19 A. No.

20 Q. What was his response?

21 A. His response was to the disappointment
22 and disappointment was that Tele 5 was, is
23 considered in Poland not a leading edge television
24 station, and he said, you know, he was
25 disappointed that with such a great program like

1 Spanski

2 TV Polonia we can only add Tele 5.

3 But I may also state that I have
4 worked also very hard to try to convince other
5 channels to be part of the TV Polonia or be in the
6 TV Polonia family. Let me add that I wasn't
7 successful.

8 Q. Was there anyone else present in your
9 meeting with Mr. Bartkiewicz in Warsaw where you
10 discussed this issue?

11 A. I'm trying to think. I had during the
12 course -- because we are talking 2003, five years
13 ago. There might have been, but I would not be
14 specific who was there.

15 Q. Since that time have you had other
16 discussions with anyone at TVP regarding the
17 Tele 5 arrangement?

18 A. When you're saying Tele 5 arrangement,
19 could you tell me what you mean?

20 Q. Your distribution of the Tele 5
21 channel.

22 A. I have presented TVP with marketing
23 materials, which showed TV Polonia, TVP 3 at that
24 time, to Polskie Radio's channels and Tele 5 that
25 was delivered TVP.

1 Spanski

2 I have -- I might have discussed it
3 with -- at that time I recall a meeting with then
4 president of TVP, Mr. Dworak, and during that
5 meeting this, you know, discussion, what we are
6 doing, how we are doing, and the presence of
7 Tele 5 with TV Polonia and TVP 3 most likely came
8 up.

9 Q. But you don't have a specific
10 recollection of exactly what was discussed in that
11 conversation regarding Tele 5 at this time.

12 A. It was not discussed that we discussed
13 a specific of our distribution or it was discussed
14 where we are, on what platforms, on what cable
15 systems, what offer we have build up, what we are
16 offering to, what package, and so on. Those
17 details in respect to, if I can use the phrase,
18 how successful we were in the distribution.

19 Q. TVP USA, the company, your company
20 that uses the name Telewizja Polska, has an
21 agreement to distribute a channel owned by Polsat;
22 is that correct?

23 A. Could you just repeat that, please?

24 Q. TVP USA has an agreement to distribute
25 a channel that is owned by Polsat, correct?

1 Spanski

2 did you ask anyone at TVP or talk to anyone at TVP
3 about your potential contract with Polsat before
4 you entered into that contract?

5 A. I did not.

6 Q. Why not?

7 A. I stated earlier, on the same subject
8 like Tele 5, there is no difference in reasoning.

9 Q. Did you notify TVP about the existence
10 of this agreement after you entered into it?

11 A. I could not recall if I did. If I did
12 it was during discussion.

13 Q. Would you agree that Polsat and Tele 5
14 are competitors of TVP's channels at least within
15 Poland?

16 A. Within Poland you're right, yes.

17 MS. HAVERSTICK: I would like to mark
18 this as Exhibit N.

19 (Defendants' Exhibit N, document
20 purported to be screen shot of tvpolonia.com
21 Web site, marked for identification, this
22 date.)

23 Q. I would like you to look at the
24 exhibit marked as Exhibit N. This is a screen
25 shot of your tvpolonia.com Web site, correct?

1 Spanski

2 A. It looks like it, yes.

3 Q. If you look here at the first page of
4 this exhibit, it appears that Tele 5 is being
5 advertised on the Web site that's called
6 tvpolonia.com, correct?

7 A. Yes, that's correct.

8 Q. Why do you have the right to do this,
9 to advertise Tele 5 on a tvpolonia.com Web site?

10 MR. ZAVIN: Objection. The name of
11 the Web site is tvpolonia.com. It is an SEI
12 Web site.

13 MS. HAVERSTICK: I think the witness
14 is going to give the answer, not the
15 attorney.

16 MR. ZAVIN: Well, you tried to use a
17 trick in the question by calling it a,
18 quote, tvpolonia.com Web site. That's the
19 name of the Web site. That's not the owner
20 of the Web site.

21 MR. MATTIACCIO: Excuse me. Is this
22 deposition under the Federal Rules?

23 MR. ZAVIN: It is.

24 MR. MATTIACCIO: Since when are
25 speaking objections allowed?

1 Spanski

2 A. Vaguely.

3 Q. Have you watched them before?

4 A. As a matter of fact, I have
5 occasionally watched those, yes.

6 Q. How are you familiar with the content
7 of those channels?

8 A. As I just said, I have watched them
9 occasionally. And to my surprise I've seen the
10 content which appeared on TV Polonia before.

11 Q. Would you agree with me that those
12 thematic channels that we have just listed are not
13 named in the agreements between TVP and Spanski
14 Enterprises?

15 A. They are not named, right.

16 Q. Is it your position that you have the
17 right to distribute those thematic channels in
18 North and South America?

19 A. It is not my position.

20 Q. Is it your position that TVP is
21 somehow improperly putting shows on those,
22 broadcasting shows on those channels -- strike
23 that.

24 Is it your position that TVP cannot
25 offer those thematic channels in the -- cannot

1 Spanski

2 Q. Total. Well --

3 MR. ZAVIN: Not counting Internet or
4 counting Internet?

5 Q. How many subscribers -- how many did
6 we just say that you had for Internet?

7 A. It was 15,000.

8 Q. Other than the 15,000 Internet
9 approximately how many subscribers do you have
10 currently?

11 A. We have crossed all together on the
12 last quarter, and I'm talking the quarter which I
13 believe -- the quarter we're talking, the last
14 which was reported was the fourth quarter of 2007.
15 We have crossed the number of 40,000, but that
16 includes Internet subscribers.

17 Q. So it's approximately 35,000
18 television?

19 A. Yes. Satellite, cable, 35 plus 15,000
20 on Internet.

21 MS. HAVERSTICK: I would like to mark
22 this as Exhibit P.

23 (Defendants' Exhibit P, complaint
24 filed in present action, marked for
25 identification, this date.)